

RECORDATION NO. 10127 Filed 1425

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION RECEIVED

RECORDATION NO. 10127-B Filed 1425

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INTERSTATE COMMERCE COMMISSION

FEB 21 3 09 PM '79

EXCHANGE NATIONAL BANK OF CHICAGO

LA SALLE AND ADAMS, CHICAGO, ILL. 60659

RECORDATION NO. 10127-C Filed 1425

FEB 21 1979 -3 15 PM

INTERSTATE COMMERCE COMMISSION

February 21, 1979

WRITER'S DIRECT LINE

Interstate Commerce Commission  
12th Street and Constitution Avenue, N. W.  
Washington, D. C. 20423

RE: Recordation of Documents

NO. 9-053A023

Date FEB 22 1979

Fee \$ 110.00

ICC Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of Section 20 c of the Interstate Commerce Act, as amended, are the original and five counterparts of the following documents:

- I. A. Conditional Sale Agreement, dated as of February 1, 1979, between Exchange National Bank of Chicago, not in its individual capacity, but solely as Trustee, pursuant to the Equipment Lease Trust Agreement dated as of January 1, 1979, as amended, and Shenandoah-Virginia Corporation.
- B. Agreement and Assignment, dated as of February 1, 1979, between Shenandoah-Virginia Corporation and LaSalle National Bank, as Agent.
- II. A. Lease of Railroad Equipment, dated as of February 1, 1979, between Island Creek Coal Company and Exchange National Bank of Chicago, not in its individual capacity, but solely as Trustee pursuant to the Equipment Lease Trust Agreement dated as of January 1, 1979, as amended.
- B. Assignment of Lease and Agreement, dated as of February 1, 1979, between Exchange National Bank of Chicago, not in its individual capacity, but solely as Trustee, pursuant to Equipment Lease Trust Agreement dated as of January 1, 1979, as amended, and La Salle National Bank, as Agent.
- C. Guaranty, dated as of February 1, 1979, of Island Creek Coal, Inc.

The names and addresses of the parties to the above described agreements are as follows:

I. A. Conditional Sale Agreement

Vendor: Shenandoah-Virginia Corporation  
8 North Jefferson Street  
Roanoke, Virginia 24042  
Attention: Vice President-Finance

Purchaser: Exchange National Bank of Chicago,  
as Owner-Trustee  
130 South La Salle Street  
Chicago, Illinois 60690  
Attention: Vice President

B. Agreement and Assignment

Vendor: Shenandoah-Virginia Corporation  
8 North Jefferson Street  
Roanoke, Virginia 24042  
Attention: Vice President-Finance

Assignee: La Salle National Bank, as Agent  
135 South La Salle Street  
Chicago, Illinois 60690  
Attention: Vice President

Acknowledged:  
Exchange National Bank of  
Chicago, as Owner-  
Trustee  
130 South La Salle Street  
Chicago, Illinois 60690

II. A. Lease of Railroad Equipment

Lessee: Island Creek Coal Company  
P. O. Box 11430  
Lexington, Kentucky 40575  
Attention: Vice President-Finance

Lessor: Exchange National Bank of Chicago,  
as Owner-Trustee  
130 South La Salle Street  
Chicago, Illinois 60690  
Attention: Vice President

B. Assignment of Lease and Agreement

Lessor: Exchange National Bank of Chicago,  
as Owner-Trustee  
130 South La Salle Street  
Chicago, Illinois 60690  
Attention: Vice President

Assignee: La Salle National Bank, as Agent  
135 South La Salle Street  
Chicago, Illinois 60690  
Attention: Vice President

Consent:  
Island Creek Coal Company  
P.O. Box 11430  
Lexington, Kentucky 40575

C. Guaranty

Guarantor: Island Creek Coal, Inc.  
c/o Occidental Petroleum Corporation  
10889 Wilshire Blvd.  
Los Angeles, California 90024  
Attention: Vice President

A general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A, which is stapled hereto and made a part hereof by this reference.

Please retain two counterparts of each of the enclosed documents in your files, conform the original and remaining three counterparts of each document, and return the originals and counterparts as so conformed to either one of the following individuals:

Carlyle C. Ring, Jr., Esq. or  
Lee H. Spence, Esq.  
Kaler, Worsley, Daniel & Hollman  
710 Ring Building  
1200 18th Street, N.W.  
Washington, D.C. 20036

Enclosed is a check in the amount of \$110.00 to cover the required recordation fee.

Thank you for your attention to this letter and its enclosures.

Very truly yours,

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity, but  
solely as Trustee, pursuant to the  
Equipment Lease Trust Agreement, as  
amended.

BY: 

MICHAEL D. GOODMAN, Vice President

Owner-Trustee as aforesaid

Enclosures

Schedule A

Type: 100-ton, open-top hopper cars, class H-12, manufactured in the shops of Norfolk and Western Railway Company in Roanoke, Virginia.

A.A.R. Mechanical Designation: HT.

Builder's Specifications: The hopper cars are built in accordance with N & W Bills of Materials 612 and 622, N & W General Arrangement Drawing J-51780 and related drawings (except that stenciling drawing is D-52088, rather than D-51801) and Brake Arrangement Drawing J-51802, all of which are incorporated herein by reference and made a part hereof, and are equipped with Stucki HS-7 stabilizers; and are painted with "direct-to-metal" Evans #2 yellow paint and stenciled with reporting marks and car numbers in Pruitt Shaffer #11926 royal blue paint as set forth in drawing D-52088.

Quantity: Two hundred and thirty-six (236).

Road (Serial) Numbers: ICRX 30,000 - 30,235, inclusive.

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Owner-Trustee

# Interstate Commerce Commission

Washington, D.C. 20423

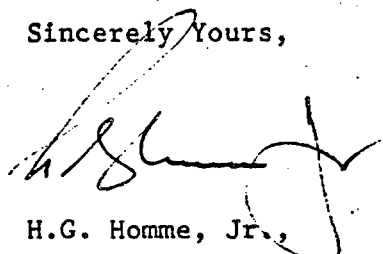
OFFICE OF THE SECRETARY

Carlyle C. Ring, Jr., Esq.  
Kaler, Worsley, Daniel & Hollman  
710 Ring Building  
1200 18th Street, N. W.  
Washington, D. C. 20036

Dear Mr. Ring:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on February 21, 1979 at 3:15 PM , and assigned recordation number(s) 10127, 10127-A, 10127-B, 10127-C and 10127-D

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

10127  
RECORDATION NO. .... Filed 1428

FEB 21 1979 - 3 15 PM

INTERSTATE COMMERCE COMMISSION

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CONDITIONAL SALE AGREEMENT

Dated as of February 1, 1979

between

EXCHANGE NATIONAL BANK OF CHICAGO

not in its individual capacity but solely  
as Trustee under a Trust Agreement dated  
as of January 1, 1979, as amended, with  
Citizens Fidelity Bank and Trust Company  
and Suburban Trust Company

and

SHENANDOAH-VIRGINIA CORPORATION

---

Filed and recorded with the Interstate Commerce Commission  
pursuant to Section 20c of the Interstate Commerce Act on  
February \_\_, 1979, at \_\_\_\_\_, recordation number \_\_\_\_\_.

CONDITIONAL SALE AGREEMENT

C-i

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CONDITIONAL SALE AGREEMENT (hereinafter called the or this Agreement) dated as of February 1, 1979 between SHENANDOAH-VIRGINIA CORPORATION (hereinafter called the Builder or the Vendor as the context may require, all as more particularly set forth in Article 1 hereof) and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as Trustee (hereinafter, together with its successors and assigns, called the Owner-Trustee) under that certain Trust Agreement dated as of January 1, 1979, as amended by that certain Trust Amendment Agreement No. 1 dated as of February 1, 1979 (said Trust Agreement, as so amended, hereinafter called the Trust Agreement) with Citizens Fidelity Bank and Trust Company and Suburban Trust Company (hereinafter, together with their successors and assigns, individually called an Owner and collectively called the Owners).

W I T N E S S E T H :

WHEREAS, the Builder agrees to construct, sell and deliver to the Owner-Trustee, and the Owner-Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (hereinafter called the Equipment);

WHEREAS, the Owner-Trustee is entering into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) with Island Creek Coal Company (hereinafter called the Lessee) substantially in the form annexed hereto as Annex C; and

WHEREAS, LaSalle National Bank (hereinafter called the Assignee) is acting as agent for State Farm Life Insurance Company pursuant to a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) among the Lessee, Island Creek Coal, Inc. (hereinafter called the Guarantor), the Assignee, the Owner-Trustee, the Owners and State Farm Life Insurance Company (hereinafter together with its successors and assigns called the Investors);

WHEREAS, the Guarantor has guaranteed the obligations of the Lessee under the Lease and the Participation Agreement pursuant to a Guaranty dated as of the date hereof (hereinafter called the Guaranty);

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1. ASSIGNMENT: DEFINITIONS

§ 1.1. Contemplated Sources of Purchase Price. The parties hereto contemplate that the Owner-Trustee will furnish not less than 34% and not more than 36% of the Purchase Price (as defined in § 4.1 hereof) of the units of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignment) between the Builder and the Assignee.

§ 1.2 Lease Assignment. In conjunction with the Assignment, the Owner-Trustee will assign to the Assignee as security for the performance of all the Owner-Trustee's obligations hereunder all right, title and interest of the Owner-Trustee in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto (hereinafter called the Lease Assignment).

§ 1.3 Meaning of "Builder" and Vendor. The term "Builder", whenever used in this Agreement, means Shenandoah-Virginia Corporation, both before and after any assignment of its rights hereunder, and any successor for the time being to its business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder and, after any such assignment, both any assignee for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are excluded from any assignment.

§ 1.4 Meaning of "Business Days." The term "business day(s)" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois are authorized or obligated to remain closed.

## ARTICLE 2. CONSTRUCTION AND SALE

The Builder shall construct the Equipment in the shops of Norfolk and Western Railway Company in Roanoke, Virginia, and will sell and deliver the Equipment to the Owner-Trustee, and the Owner-Trustee will (as hereinafter provided) purchase and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and any modifications thereof agreed upon in writing between the Builder, the Owner-Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The Builder represents and warrants that the design, quality and component parts of each unit of the Equipment to be delivered under this Agreement shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all requirements, if any, in the Manual of Standards and Recommended Practices issued by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment.

## ARTICLE 3. INSPECTION AND DELIVERY

§ 3.1. Place of Delivery. The Builder will deliver the units of the Equipment to the Owner-Trustee at the place specified in Annex B hereto, freight charges prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of the Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of § 16.1 hereof or the occurrence of any event of default (as described in § 16.1 hereof), or event which, with the lapse of time or the giving of notice or both, would constitute such an event of default, or unless it has been assured to its reasonable satisfaction that it will receive the full Purchase Price thereof. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Owner-Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, and (b) until it receives notice from the

Assignee and the Owner-Trustee that the conditions contained in Paragraphs 8 and 9, respectively, of the Participation Agreement have been met.

§ 3.2. Force Majeure. The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors, subject however to the good faith and due diligence of the Builder to minimize delays.

§ 3.3. Exclusion of Equipment. Any units of the Equipment not delivered at the time of receipt of the notice specified in clause (a) of the last sentence of § 3.1 hereof and any units of the Equipment not delivered and accepted hereunder on or before March 30, 1979, shall be excluded from this Agreement, and the Owner-Trustee shall be relieved of its obligation to purchase and pay for such units of the Equipment. If any units of the Equipment shall be excluded herefrom as aforesaid, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the units of the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of the Equipment herefrom pursuant to the foregoing provisions of this § 3.3 or pursuant to § 4.1 hereof, the Lessee will be obligated pursuant to Paragraph 1 of the Participation Agreement to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of that certain Purchase Agreement dated as of January 8, 1979, by and between the Lessee and the Builder, and the Owner-Trustee will reassign, transfer and set over to the Lessee all the right, title and interest of the Owner-Trustee in and to the units so excluded and said Purchase Agreement to the extent relating thereto.

§ 3.4 Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner-Trustee (who may be

employees of the Lessee or employees of North American Car Corporation, as agent for inspection for the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its standard quality control practices. After completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Owner-Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit or units conform to the Specifications and requirements and standards applicable thereto, the Owner-Trustee or an authorized representative of the Owner-Trustee (who may be the Lessee) shall execute and deliver to the Builder on a Closing Date (as hereinafter defined in § 4.2 hereof) a certificate of acceptance substantially in the form of Annex E hereto (hereinafter called a Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Owner-Trustee and are marked in accordance with Article 5 of the Lease; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in § 14.3 hereof. Acceptance of any unit of the Equipment by the Lessee pursuant to Article 2 of the Lease shall be deemed to be acceptance of such unit by the Owner-Trustee.

§ 3.5 Builder's Responsibilities After Delivery. On delivery by the Builder hereunder of units of the Equipment and acceptance hereunder at the place specified for delivery in Annex B hereto, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such units; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in § 14.3 thereof.

#### ARTICLE 4. PURCHASE PRICE AND PAYMENT

§ 4.1 Meaning of "Purchase Price"; Exclusion of Units. The base price per unit of the Equipment is set forth in Annex B hereto. The term "Purchase Price" as used herein shall mean such base price, together with any applicable sales taxes and freight charges. If on any Closing Date the aggregate Purchase Price of the Equipment for which settlement has theretofore been and is then made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A



hereto (or such higher amount as to which the Owner-Trustee and the Lessee may at their option agree), the Builder (and any assignee of the Builder) will enter into an agreement excluding from this Agreement such unit or units of the Equipment then proposed to be settled for and specified by the Owner-Trustee and the Lessee as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price (or such higher amount as aforesaid), and the Owner-Trustee shall have no further obligation or liability in respect of the units so excluded.

§ 4.2 Designation of Equipment; Settlement and Closing Dates. The Equipment shall be settled for in such number of groups (hereinafter called a Group or Groups) of units of the Equipment delivered to and accepted by the Owner-Trustee as is provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group shall be such date as is specified by the Lessee in accordance with Item 2 of Annex A hereto by six business days' prior written notice thereof, but in no event shall such date be later than March 30, 1979. Such notice shall specify the aggregate Purchase Price of such Group and the portion of the Purchase Price payable in installments under clause (b) of §4.3 hereof, and a copy thereof shall be sent by the Lessee to the Builder, the Assignee and the Owner-Trustee. Five business days prior to a Closing Date, the Builder shall present to the Owner-Trustee and the Lessee the invoice(s) for the Group for which there is to be a settlement.

§ 4.3 Indebtedness of Owner-Trustee to Vendor. Subject to the terms of this Agreement, the Owner-Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash or immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group an amount equal to the aggregate Purchase Price of the units of the Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to clause (b) of this §4.3; and

(b) in 36 semiannual installments, as hereinafter provided, an amount, at the option of the Owner-Trustee, equal to not less than 64% and not more than 66% of the aggregate Purchase Price of the units of the Equipment for which settlement is then being made (said portion of the Purchase Price payable in installments under this clause (b) being hereinafter called the Indebtedness, which Indebtedness shall in no event exceed \$5,610,000 in the aggregate for all Groups).

§ 4.4 Indebtedness; Payment Dates; Interest.

(1) The installments of the Indebtedness shall be payable semiannually on September 30 and March 30 in each year, commencing September 30, 1979, to and including March 30, 1997, each such date being hereinafter called a Payment Date. The unpaid balance of the Indebtedness shall bear interest from the Closing Date at which it was incurred at the rate of 9.625% per annum. Interest on the unpaid balance of the Indebtedness shall be payable to the extent accrued on March 30, 1979, and on each Payment Date thereafter. The amount of the Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such installments of principal and interest shall completely amortize the Indebtedness at maturity. The Owner-Trustee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule showing the respective amounts of principal and interest payable on March 30, 1979, and on each Payment Date.

(2) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next succeeding business day, and no interest shall be payable thereon from and after the nominal date for payment thereof to such next succeeding business day.

§ 4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months except that interest payable on March 30, 1979, shall be computed on an actual elapsed-day basis.

§ 4.6. Penalty Interest. The Owner-Trustee will pay interest at the rate of 10% per annum or at such lesser maximum rate as permitted by law (hereinafter called the Penalty Rate) upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable.

§ 4.7. Currency of Payment. All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Owner-Trustee shall not have the privilege of prepaying any portion of the Indebtedness prior to the date it becomes due.

§ 4.8. Liability of Owner-Trustee Limited to "Income and Proceeds from Equipment"; Limitation on Execution of Judgments. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this § 4.8), but not limiting the effect of Article 23 hereof, it is agreed by the Vendor that the liability of the Owner-Trustee for all payments to be made by it pursuant to this Agreement, with the exception only of the interest payment due on March 30, 1979, pursuant to § 4.4 hereof, the payments to be made pursuant to § 4.3(a) hereof and the proviso to § 13.2 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Owner-Trustee only to the extent that the Owner-Trustee or any assignee of the Owner-Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. In addition, the Vendor agrees that the Owner-Trustee

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease or the Guaranty, insofar as it relates to the Lessee or the Guarantor (or any document relative thereto) or of any of the Lessee's or Guarantor's obligations thereunder, and

(ii) shall not be responsible for the performance by the Lessee or the Guarantor of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease or the Guaranty, as the case may be; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Guaranty and the Lease Assignment against the Lessee, the Guarantor and the Equipment.

As used in this Agreement the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in § 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in § 7.2 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under any other provision of the Lease (except payments received from the Lessee under Articles 6 and 12 of the Lease as reimbursement for amounts actually paid by the Owner-Trustee or an Owner for which the Lessee is indemnifying the Owner-Trustee or such Owner) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clause (i) (not including amounts paid by the Lessee to the Owner-Trustee on account of prior defaults under clause A of § 13.1 of the Lease) as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee and

as shall equal the portion of the Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or Terminations (as defined in § 7.2 hereof)) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clause (i) which were received by the Owner-Trustee (or any assignee of the Owner-Trustee) while no such event of default was continuing to the extent that such amounts exceeded on the date that such amounts were required to be paid under the Lease (a) the amounts required to pay any portion of the Indebtedness (including prepayments thereof then required in respect of Casualty Occurrences or Terminations) and/or interest thereon then due and payable and (b) any other payments then due and payable under this Agreement. Nothing contained herein limiting the liability of the Owner-Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Owner-Trustee for an amount in excess of the amounts payable by the Owner-Trustee pursuant to the limitations set forth in this paragraph, (a) any such judgment shall state on its face that its execution shall be limited to the amounts payable pursuant to the limitations set forth in this § 4.8, and (b) it will accordingly limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

#### ARTICLE 5. SECURITY INTEREST IN THE EQUIPMENT

§ 5.1 Vendor to Retain Security Interest; Accessions. The Vendor shall and hereby does retain a security interest in the Equipment until the Owner-Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner-Trustee and notwithstanding the delivery of the Equipment to and use and possession thereof by the Owner-Trustee and the Lessee as

provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Owner-Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Owner-Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Owner-Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

§ 5.2 Obligations Upon Payment of Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Owner-Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment and deliver such instrument to the Owner-Trustee and (b) execute and deliver to the Owner-Trustee for filing or depositing in all necessary public offices, such instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner-Trustee to the Equipment.

## ARTICLE 6. TAXES

§ 6.1. Indemnification of Non-income Taxes. The Owner-Trustee agrees to pay, and to indemnify and hold the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the

Owner-Trustee, an Owner, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership, delivery, leasing, possession, use operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the Assignment, the Trust Agreement, the Participation Agreement, the Lease, the Lease Assignment, the Guaranty, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment or the other property held in trust by the Owner-Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called Taxes); excluding, however: (i) Taxes of the United States or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Vendor, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this Agreement shall be excluded whether or not the indemnified party is entitled to a credit against its United States federal income taxes; and (ii) penalties, fines and additional interest resulting only from and payable because of the negligent acts or omissions to act by the Vendor; provided, however, that the Owner-Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in § 6.2 hereof.

§ 6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Owner-Trustee. If reasonably requested by the Owner-Trustee in writing, the Vendor shall, upon receipt of a letter of indemnity satisfactory to it for all costs,

expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner-Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Owner-Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner-Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Owner-Trustee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in § 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

§ 6.3 Survival. All of the obligations of the Owner-Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement.

#### ARTICLE 7. MAINTENANCE: CASUALTY OCCURRENCES

§ 7.1. Maintenance. Subject to the limitations contained in § 4.8 and Article 23 hereof, the Owner-Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition, ordinary wear and tear excepted.

§ 7.2. Termination; Casualty Occurrences. In the event that the Lease is terminated in respect of any unit of the Equipment pursuant to § 7.9 of the Lease (any such termination being herein called a Termination) or any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the reasonable opinion of the Lessee, irreparably damaged, from any cause whatsoever or the Purchase Price of any unit shall have been refunded by



the Builder pursuant to the Builder's patent indemnities therefor or any unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 180 consecutive days during the term of the Lease (such occurrences being herein called Casualty Occurrences), the Owner-Trustee shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit is subject to a Termination or has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Indebtedness after notice from the Lessee has been received pursuant to § 7.1 of the Lease, or on the Termination Date (as defined in the Lease) in the case of a Termination (each such date being hereinafter called a Settlement Date), the Owner-Trustee shall, except to the extent insurance proceeds have been previously received by the Vendor with respect to such Casualty Occurrence and not paid by the Vendor to the Owner-Trustee, subject to the limitations contained in § 4.8 hereof, pay to the Vendor a sum equal to the Casualty Payment (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence or Termination as of such Settlement Date, together with an amount equal to accrued interest thereon and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Payment for such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Indebtedness, together with all interest accrued on the portion of the Indebtedness being prepaid. The Owner-Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made calculated as provided in § 4.4 hereof. In the event of the requisition for use by the United States Government of any unit of the Equipment not constituting a Casualty Occurrence, all of the Owner-Trustee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

§ 7.3. Obligations upon Making a Casualty Payment. Upon the making of the Casualty Payment to the Vendor for any unit of the Equipment having suffered a

Casualty Occurrence or a Termination, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Owner-Trustee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by and at the expense of the Owner-Trustee, will execute and deliver to the Owner-Trustee an appropriate instrument confirming such passage to the Owner-Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Owner-Trustee may make clear upon the public records the title of the Owner-Trustee to such unit.

§ 7.4 Casualty Payment. The Casualty Payment for each unit of the Equipment suffering a Casualty Occurrence or a Termination shall be deemed to be that portion of the original Purchase Price thereof referred to in § 4.3(b) hereof remaining unpaid on the date as of which such Casualty Payment shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 7 with respect to any other unit). For the purpose of this § 7.4, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all of the Equipment.

#### ARTICLE 8. INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any units of the Equipment suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner-Trustee; provided, however, that no event of default shall have occurred and be continuing hereunder and the Owner-Trustee shall have made the Casualty Payment for such units, together with accrued interest thereon, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit of the Equipment not suffering a Casualty Occurrence or a Termination shall be paid to the Owner-Trustee upon proof reasonably satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

## ARTICLE 9. REPORTS AND INSPECTIONS

On or before April 30 in each year, commencing with the year 1980, the Owner-Trustee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement to the effect set forth in Article 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Owner-Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

## ARTICLE 10. MARKING OF EQUIPMENT

The Owner-Trustee will cause each unit of the Equipment to be kept numbered and marked as provided in Article 5 of the Lease. The Owner-Trustee will not permit any such unit to be placed in operation or exercise any control over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Owner-Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed and deposited by or on behalf of the Owner-Trustee in all public offices where this Agreement shall have been filed and deposited.

Except as hereinabove provided, the Owner-Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names, initials or other insignia customarily used by the Lessee or its affiliates.

## ARTICLE 11. COMPLIANCE WITH LAWS AND RULES

During the term of this Agreement, the Owner-Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's

operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Owner-Trustee will conform therewith at no expense to the Vendor; provided, however, that the Owner-Trustee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

#### ARTICLE 12. POSSESSION AND USE

§ 12.1 Possession and Use of Equipment. The Owner-Trustee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Owner-Trustee, to the possession of the Equipment and the quiet enjoyment and use thereof, but only upon and subject to all the terms and conditions of this Agreement.

§ 12.2 Lease Permitted; No Amendment or Termination. The Owner-Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

#### ARTICLE 13. PROHIBITION AGAINST LIENS

§ 13.1 Owner-Trustee to Discharge Liens. The Owner-Trustee will pay or discharge any and all sums claimed by any party from, through or under the Owner-Trustee, or its successors or assigns, which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment or any unit thereof or the income and proceeds from the Equipment and will promptly discharge any such lien, charge, security interest or encumbrance which

arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges, security interests or encumbrances upon the Equipment shall be secured by and under this Agreement. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, either not due and delinquent or being contested in accordance with §6.2 hereof or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, either not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension).

§ 13.2 Article 13 Subject to Article 23 Except in Certain Instances. The obligations of the Owner-Trustee under this Article 13 are subject to the limitations contained in §4.8 and Article 23 hereof; provided, however, that the Owner-Trustee will pay or discharge any and all claims, liens, charges, security interests, and encumbrances claimed by any party from, through or under the Owner-Trustee or the Owners not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), but the Owner-Trustee shall not be required to pay or discharge any such claim, lien, charge, security interest, or encumbrance so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

#### ARTICLE 14. INDEMNITIES AND WARRANTIES

§ 14.1 Indemnification. The Owner-Trustee shall pay, and shall protect, indemnify and hold the

Vendor and any agents and servants of the Vendor (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation reasonable attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Agreement or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of the Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee or the Vendor, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Agreement or any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Vendor's retention of a security interest under this Agreement or the Lease Assignment; except that the Owner-Trustee shall not be liable to the Builder in respect of any of the foregoing matters to the extent liability in respect thereof arises from an act or omission of the Builder or is covered by the Builder's patent indemnification referred to in § 14.3 hereof. The Owner-Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification

may proceed directly against the Owner-Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner-Trustee may and, upon such Indemnified Person's request, will at the Owner-Trustee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Owner-Trustee and approved by such Indemnified Person and, in the event of any failure by the Owner-Trustee to do so, the Owner-Trustee shall pay all reasonable costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner-Trustee is required to make any payment under this Article 14, the Owner-Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Owner-Trustee, and provided that no event of default set forth in § 16.1 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, the Owner-Trustee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Owner-Trustee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Owner-Trustee pursuant hereto shall be paid over to the Owner-Trustee to the extent necessary to reimburse the Owner-Trustee for indemnification payments previously made in respect of such matter.

§ 14.2 Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner-Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The Owner-Trustee will bear the responsibility for, and risk of, and shall not be released from its obligations under this Agreement in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

§ 14.3 Warranties of Builder; Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

#### ARTICLE 15. ASSIGNMENTS

§ 15.1 Assignment by Owner-Trustee. Except as provided in the Trust Agreement, the Owner-Trustee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

§ 15.2 Assignment by Vendor. All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner-Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time; provided, that, if such assignment or reassignment results in more than one person having the rights, benefits and advantages of the Vendor, those persons shall take such action as is reasonably necessary to empower one person to exercise, on behalf of all such persons, such rights, benefits and advantages, including accepting payments and otherwise acting on behalf of such persons having such rights. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to



construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 14 hereof, or relieve the Owner-Trustee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, the assignor shall give written notice to the Owner-Trustee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner-Trustee of the notification of any such assignment, all payments thereafter to be made by the Owner-Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

§ 15.3 No Setoff Against Indebtedness Upon Assignment. The Owner-Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Owner-Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid Indebtedness or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Owner-Trustee arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Owner-Trustee or the Lessee, as the case may be, against and only against the Builder.

## ARTICLE 16. DEFAULTS

§ 16.1 Events of Default; Termination of Lease; Declaration of Default; Acceleration of Indebtedness. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Owner-Trustee shall fail to pay or cause to be paid in full any sum payable by the Owner-Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 days after the date such payment is due and payable; or

(b) the Owner-Trustee or the Lessee shall, for more than 45 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee), the Lease, the Lease Assignment, the Consent, the Participation Agreement or the Assignment on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Lessee or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease or the Guarantor under the Guaranty, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by or against the Owner-Trustee, the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Owner-Trustee hereunder, an Owner under the Participation Agreement or the Trust Agreement, the Lessee under the Lease or the Guarantor under the Guaranty, as the case may be, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations of the Owner-Trustee, an Owner, the Lessee or the Guarantor, as the case may be), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations of the Owner-Trustee, such Owner, the Lessee or the Guarantor, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Owner-Trustee, such Owner, the Lessee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then at any time during the continuance of such an event of default the Vendor may, upon five days' written notice to the Owner-Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the provisions of §15.2(2) of the Lease, cause the term of the Lease immediately upon such notice to terminate (and the Owner-Trustee acknowledges the right of the Vendor to terminate the term of the Lease), provided, however, that such termination shall not be in derogation of or impair the rights of the Vendor to enforce any of its rights and remedies under Article 13 of the Lease and shall not

affect the indemnities which by the provisions of the Lease survive its termination, and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the Indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to § 4.8 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner-Trustee, subject to the provisions of § 4.8 and Article 23 hereof, wherever situated.

§ 16.2 Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Owner-Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. It is agreed by the Owner-Trustee that time is of the essence to this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17. REMEDIES

§ 17.1 Vendor May Take Possession of Equipment. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the provisions of § 15.2(2) of the Lease and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner-Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner-Trustee, the Lessee or any other person and for such

purpose may enter upon the premises of the Owner-Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner-Trustee or the Lessee, subject to all mandatory requirements of due process of law.

§ 17.2 Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Owner-Trustee shall at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) and at the usual speed place such units upon such storage tracks as the Vendor reasonably may designate;

(b) permit the Vendor to store such units on such tracks at the risk of the Owner-Trustee without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the same to be transported to any reasonable place as directed by the Vendor.

During any storage period, the Lessee has agreed pursuant to § 14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. The Owner-Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner, subject to all mandatory requirements of law.

§ 17.3. Vendor May Dispose of or Retain Equipment. At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election, retain the Equipment in satisfaction of the entire Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner-Trustee and the Lessee by telegram or registered mail, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Owner-Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Owner-Trustee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Owner-Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of and removing, storing and holding the Equipment, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee; provided, further, that if the Owner-Trustee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

§ 17.4 Vendor May Sell Equipment; Owner-Trustee's Right of Redemption. At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Owner-Trustee, the

Lessee and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee under § 15.2 of the Lease, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Owner-Trustee, the Lessee or any other party claiming from, through or under the Owner-Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Owner-Trustee should tender full payment of the total unpaid balance of the Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

§ 17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at Chicago, Illinois, at such time or times as the Vendor shall specify (unless Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Owner-Trustee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner-Trustee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40

offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Owner-Trustee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner-Trustee or Lessee (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

§ 17.6 Effect of Remedies and Powers. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Owner-Trustee shall not otherwise alter or affect the Vendor's rights or the Owner-Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Owner-Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

§ 17.7. Deficiencies. If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner-Trustee shall, subject to the limitations of §4.8 and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if the Owner-Trustee shall fail to pay such



deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of § 4.8 and Article 23 hereof, be entitled to recover a judgment therefor against the Owner-Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner-Trustee.

§ 17.8. Expenses. The Owner-Trustee will pay out of the income and proceeds from the Equipment all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover out of the income and proceeds from the Equipment all reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

§ 17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

#### ARTICLE 18. APPLICABLE STATE LAWS

§ 18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner-Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

§ 18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Owner-Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of

the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

#### ARTICLE 19. RECORDING

The Owner-Trustee will cause this Agreement, any assignments hereof, the Lease, the Lease Assignment and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Owner-Trustee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will redeliver, refile, reregister, redeposit and rerecord whenever required) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Owner-Trustee will promptly furnish to the Vendor evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

#### ARTICLE 20. REPRESENTATIONS AND WARRANTIES OF BUILDER

The Builder hereby represents and warrants to the Owner-Trustee that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Owner-Trustee, this Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms.

#### ARTICLE 21. HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

All article and section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Owner-Trustee with respect to the Equipment and supersedes all other agreements, oral

or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Owner-Trustee.

#### ARTICLE 22. NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Owner-Trustee, at 130 South LaSalle Street, Chicago, Illinois 60690, Attention: Vice President, with copies to Citizens Fidelity Bank and Trust Company, 419 West Jefferson Street, Louisville, Kentucky 40202, Attention: Vice President, and Suburban Trust Company, 6495 New Hampshire Avenue, Hyattsville, Maryland 20783, Attention: President,

(b) to the Builder, at its address specified in Item 1 of Annex A hereto,

(c) to the Assignee, at 135 South LaSalle Street, Chicago, Illinois 60690, Attention: Vice President,

(d) to any assignee of the Vendor, or of the Owner-Trustee, at such address as may have been furnished in writing to the Owner-Trustee, or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. Any such notice shall be deemed to be effective three days after its deposit.

#### ARTICLE 23. IMMUNITIES; SATISFACTION OF UNDERTAKINGS

§ 23.1. No Recourse Against Certain Persons.  
No recourse shall be had in respect of any obligation due under this Agreement against any incorporator,

stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

§ 23.2. Satisfaction of Certain Covenants. The obligations of the Owner-Trustee under §§ 7.1, 17.2, 17.7 and 17.8 hereof, and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects (except, in the case of Article 13 hereof, as set forth in § 13.2 thereof), and be of no further force or effect in so far as they involve personal liability for money or performance or otherwise of the Owner-Trustee, other than out of "income and proceeds from the Equipment" (as defined in § 4.8 hereof), upon the execution and delivery of the Lease; provided, however, that such obligations shall be within the scope of clauses (a) and (b) of § 16.1 hereof (it being the intention of the parties hereto that neither the Owner-Trustee nor any of its properties shall be subject to any liability for any breach or alleged breach by it of any such obligation except out of the "income and proceeds from the Equipment", but that any such breach may be made the basis of an event of default under said Article 16). No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Owner-Trustee increasing or decreasing the rentals or casualty values payable pursuant to Articles 3 and 7 of the Lease as long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Owner-Trustee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor.

§ 23.3. No Personal Liability of Owner-Trustee. It is expressly agreed by and between the parties hereto that each and all of the representations, undertakings and agreements herein made on the part of the Owner-Trustee

are each and every one of them made and intended not as personal representations, undertakings and agreements by Exchange National Bank of Chicago, or for the purpose or with the intention of binding said institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution on account of any representation, undertaking or agreement of the Owner-Trustee, whether expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this § 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Owner-Trustee (provided that the Vendor shall limit its execution of such judgment to the amounts payable pursuant to the limitations contained in this paragraph and § 4.8 hereof, and further, that the judgment shall state on its face that its execution shall be so limited) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease or the Guarantor under the Guaranty.

The Owner-Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.1 thereof as in effect on the date of execution and delivery hereof.

#### ARTICLE 24. LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, such additional rights, if any, arising out of the filing or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in

which this Agreement or any assignment hereof shall be filed or deposited or in which any unit of the Equipment shall be located, and such rights, if any, arising out of the marking of the Equipment.

#### ARTICLE 25. EXECUTION

This Agreement may be executed in any number of counterparts, but the counterpart marked Original Counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

SHENANDOAH-VIRGINIA CORPORATION

by

J. T. Valley  
Title: President

[Corporate Seal]

Attest:

Joseph Pakush  
SECRETARY

JOSEPH PAKUSH

EXCHANGE NATIONAL BANK OF CHICAGO,  
not individually but  
solely in its capacity as  
Trustee as aforesaid

by

Title: \_\_\_\_\_

[Seal]

Attest:

\_\_\_\_\_

STATE OF VIRGINIA )  
*City*  
 COUNTY OF Roanoke ) ss.

On this 15<sup>th</sup> day of February, 1979, before me personally appeared J. T. Halleray, to me personally known, who being by me duly sworn, says that he is a President of SHENANDOAH-VIRGINIA CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judy A. McLanney  
 Notary Public

My Commission expires March 14, 1981

STATE OF ILLINOIS )  
 ) ss.  
 COUNTY OF COOK )

On this \_\_\_\_\_ day of February, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association, not in its individual capacity but solely as Trustee.

\_\_\_\_\_  
 Notary Public

My Commission expires \_\_\_\_\_

SCHEDULE I  
Allocation Schedule of Each  
\$1,000,000 of Indebtedness Payable  
in (i) One Interim Payment of Interest Only  
on March 30, 1979 and  
(ii) 36 Semiannual Installments  
Commencing September 30, 1979

<u>Installment No.</u>	<u>Principal Balance (After Payment)</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Payment</u>
(3/30/79)	\$1,000,000.00	\$ *	\$ -0-	\$ -0-
1 (9/30/79)	989,429.32	48,125.00	10,570.68	58,695.68
2 (3/30/80)	978,349.93	47,616.29	11,079.39	58,695.68
3 (9/30/80)	966,737.34	47,083.09	11,612.59	58,695.68
4 (3/30/81)	954,565.89	46,524.23	12,171.45	58,695.68
5 (9/30/81)	941,808.70	45,938.48	12,757.20	58,695.68
6 (3/30/82)	928,437.56	45,324.54	13,371.14	58,695.68
7 (9/30/82)	914,422.94	44,681.06	14,014.62	58,695.68
8 (3/30/83)	899,733.86	44,006.60	14,689.08	58,695.68
9 (9/30/83)	884,337.87	43,299.69	15,395.99	58,695.68
10 (3/30/84)	868,200.95	42,558.76	16,136.92	58,695.68
11 (9/30/84)	851,287.44	41,782.17	16,913.51	58,695.68
12 (3/30/85)	833,559.97	40,968.21	17,727.47	58,695.68
13 (9/30/85)	814,979.37	40,115.07	18,580.61	58,695.68
14 (3/30/86)	795,504.57	39,220.88	19,474.80	58,695.68
15 (9/30/86)	775,092.54	38,283.66	20,412.02	58,695.68
16 (3/30/87)	753,698.19	37,301.33	21,394.35	58,695.68
17 (9/30/87)	731,274.24	36,271.73	22,423.95	58,695.68
18 (3/30/88)	707,771.13	35,192.57	23,503.11	58,695.68
19 (9/30/88)	670,093.62	34,061.49	37,677.51	71,739.00
20 (3/30/89)	630,602.87	32,248.26	39,490.74	71,739.00
21 (9/30/89)	589,211.64	30,347.76	41,391.24	71,739.00
22 (3/30/90)	545,828.45	28,355.81	43,383.19	71,739.00
23 (9/30/90)	500,357.44	26,267.99	45,471.01	71,739.00
24 (3/30/91)	452,698.14	24,079.70	47,659.30	71,739.00
25 (9/30/91)	402,745.24	21,786.10	49,952.90	71,739.00
26 (3/30/92)	350,388.35	19,382.11	52,356.89	71,739.00
27 (9/30/92)	295,511.79	16,862.44	54,876.56	71,739.00
28 (3/30/93)	255,219.68	14,221.51	40,292.11	54,513.62

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\*Interest only on the Indebtedness shall be paid to the extent accrued on March 30, 1979.



<u>Installment No.</u>	<u>Principal Balance (After Payment)</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Payment</u>
29 (9/30/93)	222,331.07	12,282.45	32,888.61	45,171.06
30 (3/30/94)	187,721.97	10,699.68	34,609.10	45,308.78
31 (9/30/94)	153,339.77	9,034.12	34,382.20	43,416.32
32 (3/30/95)	116,873.12	7,379.48	36,466.65	43,846.13
33 (9/30/95)	80,663.85	5,624.52	36,209.26	41,833.78
34 (3/30/96)	42,229.11	3,881.95	38,434.74	42,316.69
35 (9/30/96)	4,082.78	2,032.28	38,146.33	40,178.61
36 (3/30/97)	-0-	196.48	4,082.78	4,279.26

ANNEX A

to

Conditional Sale Agreement

- Item 1: SHENANDOAH-VIRGINIA CORPORATION  
8 North Jefferson Street  
Roanoke, Virginia 24009  
Attention: President
- Item 2: The Equipment shall be settled for on or after February 1, 1979, and on or prior to March 30, 1979, and in such number of Groups as may be agreed to by the Lessee and the Builder (not exceeding a total of five Groups).
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called this Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not constructed by the Builder) and workmanship under normal use and service. The Builder's obligation under its warranty as to any unit of the Equipment shall be limited to repairing or replacing any part or parts on such unit which the Builder's examination shall disclose to its satisfaction to be defective and which, within one year or 50,000 miles, whichever occurs first, after acceptance of such unit by the Owner-Trustee, shall be returned to the Builder, with transportation charges prepaid to Roanoke, Virginia, or such other repair facility as the Builder may reasonably designate. EXCEPT FOR THE OBLIGATIONS AND LIABILITIES OF THE BUILDER UNDER ARTICLES 3, 4 AND 14 OF THIS AGREEMENT, THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR

PURPOSE, LIABILITY FOR LOST PROFIT OR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR COMMERCIAL LOSSES, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES, AND THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE EQUIPMENT, EXCEPT AS AFORESAID. IT IS FURTHER UNDERSTOOD AND AGREED THAT IN NO EVENT SHALL THE BUILDER BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 3.

- Item 4: The Builder agrees to indemnify, protect and hold harmless the Owner-Trustee and the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner-Trustee or the Lessee because of the use in or about the construction or operation of any unit of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right, except any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner-Trustee or the Lessee because of the use in or about the construction or operation of any unit of the Equipment of any design, system, process, formula, combination specified by the Lessee and not developed or purported to be developed by the Builder or any article or material specified by the Lessee and not manufactured by the Builder. The Builder agrees to and hereby does, to the extent legally possible without impairing any

claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any unit of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$8,350,000.

ANNEX B(\*)

to

Conditional Sale Agreement

Type: 100-ton, open-top hopper cars, class H-12, manufactured in the shops of Norfolk and Western Railway Company in Roanoke, Virginia.

A.A.R. Mechanical Designation: HT.

Builder's Specifications: The Equipment shall be built in accordance with N & W Bills of Materials 612 and 622, N & W General Arrangement Drawing J-51780 and related drawings (except that stenciling drawing shall be D-52088, rather than D-51801) and Brake Arrangement Drawing J-51802, all of which are incorporated herein by reference and made a part hereof, and shall be equipped with Stucki HS-7 stabilizers; and shall be painted with "direct-to-metal" Evans #2 yellow paint and stenciled with reporting marks and car numbers in Pruitt Shaffer #11926 royal blue paint as set forth in drawing D-52088.

Quantity: 236 (Groups of 100, 70 and 66).

Unit Base Price: \$34,750, f.o.b. Roanoke, Virginia.

Total Base Price: \$8,201,000.

Road (Serial) Numbers: ICRX 30,000 - 30,235, inclusive.

Estimated Times of Delivery:

February 14, 1979 (100 cars),  
February 28, 1979 (70 cars)  
and March 20, 1979 (66 cars).

Place of Delivery:

Fies Mine, Hopkins County,  
Kentucky.

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- \* This Annex B sets forth a description of units of the Equipment having total base price of \$8,201,000. It is understood, however, that certain of said units may be delivered to and accepted by the Lessee prior to the execution and delivery of this Agreement, in which case any unit of the Equipment so delivered and accepted will be excluded from this Annex B by an appropriate supplement hereto. After delivery of all of the units of the Equipment covered by this Agreement, this Annex B will be appropriately amended, if necessary, to describe only those units covered by this Agreement.



ANNEX C  
to Conditional  
Sale Agreement

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LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1979

Between

ISLAND CREEK COAL COMPANY

as Lessee,

and

EXCHANGE NATIONAL BANK OF CHICAGO

not in its individual capacity but solely  
as Trustee under a Trust Agreement dated as  
of January 1, 1979, as amended, with Citizens  
Fidelity Bank and Trust Company and Suburban Trust  
Company

as Lessor.

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Filed and recorded with the Interstate Commerce Commission  
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number \_\_\_\_\_.



# LEASE OF RAILROAD EQUIPMENT

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\* This table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of, this document.

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LEASE OF RAILROAD EQUIPMENT (hereinafter called the Lease or this Lease) dated as of February 1, 1979, between ISLAND CREEK COAL COMPANY, a Delaware corporation (hereinafter called the Lessee), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as Trustee (hereinafter called the Owner-Trustee) under that certain Trust Agreement dated as of January 1, 1979, as amended by that certain Trust Amendment Agreement No. 1 dated as of February 1, 1979 (said Trust Agreement, as so amended, hereinafter called the Trust Agreement) with Citizens Fidelity Bank and Trust Company and Suburban Trust Company (hereinafter individually called an Owner and collectively the Owners),

W I T N E S S E T H:

WHEREAS, the Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the CSA) with Shenandoah-Virginia Corporation (hereinafter called the Builder) wherein the Builder has agreed to construct, sell and deliver to the Owner-Trustee the units of railroad equipment described in Appendix A hereto;

WHEREAS, the Builder is assigning a portion of its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof (hereinafter called the Assignment) to LaSalle National Bank, acting as agent under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) among said agent, the Lessee, Island Creek Coal, Inc. (hereinafter called the Guarantor), the Owner-Trustee, the Owners and State Farm Life Insurance Company (hereinafter, together with its successors and assigns, called the Investors) (said agent as so acting being hereinafter, together with its successors and assigns, called the Vendor);

WHEREAS, the Guarantor is executing a Guaranty dated as of the date hereof (hereinafter called the Guaranty) under which it guarantees the obligations of the Lessee hereunder and under certain other agreements of the Lessee;

WHEREAS, the Lessee desires to lease such number of units of railroad equipment as are delivered and accepted and settled for under the CSA (hereinafter

individually called a Unit and collectively the Units) at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, the Owner-Trustee will assign this Lease for security purposes to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment) and the Lessee will consent to the Lease Assignment pursuant to a Consent and Agreement (hereinafter called the Consent);

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner-Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

#### ARTICLE 1. NET LEASE

This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner-Trustee or any Owner under this Lease or the CSA including the Lessee's rights by subrogation thereunder, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or enforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be

payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner-Trustee, the Owners or the Vendor for any reason whatsoever.

## ARTICLE 2. DELIVERY

The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Owner-Trustee under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point at which such Unit is so delivered to the Owner-Trustee. Upon such delivery, the Lessee will cause an employee or other agent of the Lessee to inspect the same, and if such Unit conforms to the Specifications (as defined in the CSA) and requirements applicable thereto and is found to be acceptable, the Lessee shall accept delivery of such Unit on behalf of the Owner-Trustee under the CSA and on behalf of itself hereunder and execute and deliver to the Owner-Trustee a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on or as of the date of such Certificate of Acceptance and is marked in accordance with Article 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

## ARTICLE 3. RENTALS

§3.1. Amount and Date of Payment. (1) The Lessee agrees to pay to the Owner-Trustee, as rental for each Unit subject to this Lease, 36 consecutive semi-annual payments payable, in arrears, on March 30 and September 30 in each year, commencing September 30, 1979, to and including March 30, 1997. The first 18 rental payments shall each be in an amount equal to 3.83405% of the Purchase Price (as defined in §4.1 of the CSA) of each such Unit and the next 18 rental payments shall be in an amount equal to 4.68605% of such Purchase Price.

(2) In addition to the foregoing rentals, the Lessee hereby agrees to pay, as additional rentals, to the Owner-Trustee amounts equal to the amounts required for the Owner-Trustee to make the payments provided for in the third paragraph of Paragraph 2 and the last sentence of the second paragraph and in the last paragraph of Paragraph 10 of the Participation Agreement at the times required for such payments therein (without regard to the limitation of the obligations of the Owner-Trustee set forth therein) and the Owner-Trustee agrees to apply such rentals for such purposes.

§3.2. Payments on Nonbusiness Days. If any of the semiannual rental payment dates referred to in §3.1 is not a business day, the payment otherwise payable on such date shall be payable on the next succeeding business day, and no interest shall be payable thereon for the period from and after the nominal date for payment thereof to such next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

§3.3. Instructions To Pay Vendor and Owner-Trustee. If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in



writing that all sums due from the Owner-Trustee under the CSA have been fully satisfied and discharged, the Owner-Trustee irrevocably instructs the Lessee, subject to §6.4 and §12.1 hereof, to make all the payments provided for in this Lease to the Vendor, for the account of the Owner-Trustee, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Owner-Trustee under the CSA known by the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA, or event which with the lapse of time or notice or both could constitute such an event of default, shall have occurred and be continuing, to pay any balance promptly (and in no event later than the third business day after the Vendor shall have received such payments) to or upon the order of the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing.

§3.4. Payment in Immediately Available Funds.

The Lessee agrees to make each payment provided for herein as contemplated by this Article 3 in immediately available funds at or prior to 11:00 a.m., Chicago time, on the date such payment is due.

ARTICLE 4. TERM OF LEASE

The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit under the CSA and, subject to the provisions of Articles 7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under Articles 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

ARTICLE 5. IDENTIFICATION MARKS

The Lessee will cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section

20c", or other appropriate words designated by the Owner-Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner-Trustee's and Vendor's title to and property in such Unit and the rights of the Owner-Trustee under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Owner-Trustee and filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner-Trustee an opinion of counsel to the effect that such statement has been so filed and deposited, such filing and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no filing, deposit or giving of notice with or to any other federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Owner-Trustee in such Units. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates. Except as provided herein, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

#### ARTICLE 6. TAXES

##### §6.1. Indemnification for Non-income Taxes.

The Lessee agrees to pay, and to indemnify and hold the Owner-Trustee, the Owners, and the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, either Owner, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any federal, state or

local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement, the CSA, the Assignment, the Lease Assignment, the Guaranty, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner-Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being herein-after called Taxes); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States federal income taxes or is indemnified by the Lessee pursuant to the Participation Agreement) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee (in its individual capacity), either Owner or the Vendor, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by either Owner or any transfer or disposition by either Owner resulting from bankruptcy or other proceedings for the relief of creditors in which such Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; and (iii) penalties, fines and additional interest resulting only from and payable because of the negligent acts or omissions to act by the Owner-Trustee, either Owner or the Vendor; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in §6.2 hereof. The Lessee further agrees to pay on or before the time or times prescribed by

law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in accordance with §6.2 hereof.

Notwithstanding the foregoing and only to the extent, if any, that the Owner-Trustee, either Owner or the Vendor receives or is allowed a credit against its West Virginia Corporation Income Tax (or similar tax) for West Virginia Business and Occupation Taxes paid or incurred with respect to any of the Units, the Lessee's obligations under this §6.1 shall be reduced to the extent of such credit. Within ninety (90) days after the end of its fiscal year, the Owner-Trustee, each Owner and the Vendor shall certify to the Lessee the amount, if any, of the West Virginia Business and Occupation Tax imposed upon each of them with respect to the Units which has been or will be used by such party to reduce its West Virginia Corporation Income Tax (or similar tax).

6.2. Claims; Contests; Refunds. If claim is made against the Owner-Trustee, either Owner or the Vendor for any Taxes indemnified against under this Article 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner-Trustee, such Owner or the Vendor, as the case may be, shall, at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner-Trustee, such Owner or the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Owner-Trustee, such Owner or the Vendor in any such proceeding or action) if in the reasonable opinion of the Owner-Trustee and both Owners or such Owner or the

Vendor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Owner-Trustee hereunder or of the Vendor under the CSA. The Lessee agrees to give the Owner-Trustee, such Owner or the Vendor, as the case may be, notice of such contest within 30 days thereof. If the Owner-Trustee, such Owner or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Owner-Trustee, such Owner or the Vendor, as the case may be, shall pay the Lessee the amount of such refund or interest net of reasonable out-of-pocket expenses; provided, however, that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

§6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this Article 6 (except obligations resulting from the second sentence of §6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of the Owner-Trustee and the Vendor in the Units as shall be satisfactory to the Owner-Trustee and the Vendor or, where not so permitted, will notify the Owner-Trustee, the Vendor and the Owners of such requirement and will prepare and deliver such reports to the Owner-Trustee and the Vendor within a reasonable time prior to the time such reports are to be filed, or in such manner as shall be reasonably satisfactory to the Owner-Trustee, the Vendor and the Owners. All reasonable costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

§6.4. Survival. All the obligations of the Lessee under this Article 6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the CSA or the termination of this Lease. Payments due from the Lessee to the Owner-Trustee, either Owner or the Vendor under this Article 6 shall be made directly to the party indemnified.

ARTICLE 7. PAYMENT FOR CASUALTY OCCURRENCES;  
ECONOMIC OBSOLESCENCE; SURPLUS

§7.1. Definitions of Casualty Occurrence; Payments. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the reasonable opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to Articles 14 or 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 180 consecutive days during the term of this Lease or during any renewal term hereof (such occurrences being hereinafter called Casualty Occurrences), the Lessee shall promptly and fully notify the Owner-Trustee and the Vendor with respect thereto. On the next succeeding March 30 or September 30, whichever is earlier (each such date being hereinafter called a Casualty Payment Date), the Lessee shall pay to the Owner-Trustee a sum equal to the Casualty Value (as hereinafter defined in §7.5) of such Unit as of such Casualty Payment Date, plus (if not previously paid) the semiannual rental in respect of such Unit accrued as of such rental payment date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is being returned pursuant to Articles 14 and 17 hereof, the Lessee shall make such payment to the Owner-Trustee on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Owner-Trustee shall be entitled to recover possession of such Unit. It is understood that if a Unit is damaged the Lessee shall not be required to make a final determination as to whether or not it is irreparably damaged or can be repaired for a period of 180 days after

such Unit is damaged but no later than the termination of this Lease or any renewal term hereof (but if the final determination is that it is irreparably damaged it shall, only for the purposes of §7.5 hereof, be deemed to have suffered a Casualty Occurrence on the date of the damage).

If any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Owner-Trustee with respect thereto and pay the Owner-Trustee the Casualty Value therefor computed as if the Casualty Occurrence had been suffered on the last day of the term of this Lease. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Owner-Trustee. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Owner-Trustee and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Owner-Trustee. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Owner-Trustee in the manner provided in Article 17 hereof.

§7.2. Requisition by United States Government.  
In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period

(except where deemed a Casualty Occurrence pursuant to the last paragraph of §7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Owner-Trustee or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

§7.3. Lessee Agent for Disposal. The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit or any component thereof suffering a Casualty Occurrence before and after expiration of the Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee, (i) the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Owner-Trustee and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the Builder pursuant to the patent indemnity provisions of the CSA an amount equal to any payment made by the Builder to the Owner-Trustee in respect thereof under the CSA.

§7.4. Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in §7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

§7.5. Amount of Casualty Value of Units. The Casualty Value of a Unit as of the Casualty Payment Date on which payment is made shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite such Casualty Payment Date, plus, on any Casualty Payment Date with respect to a Casualty Occurrence occurring before the



third, fifth or seventh anniversary of the date of the Certificate of Acceptance for such Unit, an amount equal to the percentage of the Purchase Price of such Unit suffering a Casualty Occurrence (such amount to be determined as of the actual date of the Casualty Occurrence) set forth below:

<u>Anniversary of the date of the Certificate of Acceptance</u>	<u>Percentage of Purchase Price to be added</u>
Third	19.9125%
Fifth	13.2750%
Seventh	6.6375%

§7.6. No Release. Except as hereinabove in this Article 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

§7.7. Insurance to Be Maintained. (1) The Lessee will, at all times prior to the return of the Units to the Owner-Trustee, at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; provided, however, that the Lessee may self-insure such Units to the extent it self-insures equipment similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third party personal and property damage, and the Lessee will continue to carry such insurance with such deductibles, in such amounts (which, with respect to the above-mentioned public liability insurance, shall not be less than \$10,000,000), for such risks and with such insurance companies as is consistent with prudent industry practice but in any event with no greater deductibles and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units. The proceeds thereof shall be payable to the Vendor, the Owner-Trustee and the Lessee, as their interests may appear, so long as the Indebtedness, if any, evidenced by the CSA shall not have been

paid in full, and thereafter to the Owner-Trustee and the Lessee, as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancellation or material change in coverage to the Owner-Trustee and the Vendor and (ii) name the Owner-Trustee and the Vendor as additional named insureds, as their respective interests may appear, and shall provide that, in respect of the interests of the Owner-Trustee and the Vendor in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner-Trustee or the Vendor) and shall insure the Owner-Trustee and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies (or in the application therefor or in any other document submitted to the insurer in connection therewith) by the Lessee or by any other person (other than the Owner-Trustee or the Vendor). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 5 days prior to the expiration dates of the expiring policies required pursuant to this Article 7, the Lessee shall deliver to the Owner-Trustee and the Vendor certificates of insurance issued by the insurers thereunder evidencing the insurance maintained pursuant to this Article 7; provided, however, that if the delivery of a certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal certificate upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Owner-Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Owner-Trustee for the cost thereof together with interest, on the amount of the cost to the Owner-Trustee of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in Article 19 hereof, computed from the date of the Owner-Trustee's payment of such cost.

§7.8. Insurance Proceeds and Condemnation Payments. If the Owner-Trustee shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Owner-Trustee shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Owner-Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Unit, to the Owner-Trustee. All insurance proceeds received by the Owner-Trustee (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof reasonably satisfactory to the Owner-Trustee that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§7.9. Economic Obsolescence; Surplus. In the event that the Lessee shall, in its reasonable judgment, determine that any Unit or the Units have or will become economically obsolete (including, but not limited to any Unit's or the Units' requiring additions, modifications, improvements or replacements of the nature described in clause (iv) of §11.2(2) hereof) in, or surplus to, the Lessee's business, the Lessee shall have the right, at its option and on at least 90 days' prior written notice to the Owner-Trustee and the Vendor, to terminate (hereinafter called a Termination) this Lease as to such Unit(s) (subject to the survival of the obligations described in Article 4 hereof) as of any succeeding rental payment date specified in such notice occurring on or after March 30, 1986 (the termination date specified in such notice being hereinafter called the Termination Date).

The Lessee shall use its best efforts preceding the Termination Date to obtain bids for the purchase of such Unit or Units, and the Lessee shall at least five business days prior to the Termination Date certify to the Owner-Trustee the amount of each such bid and the name and address of the party (which shall not be a corporation or

individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Unit or Units) submitting such bid. On the Termination Date the Owner-Trustee shall sell such Unit or Units for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sales price realized at such sale shall be paid to the Owner-Trustee in immediately available funds on the Termination Date and, in addition, on the Termination Date the Lessee shall pay to the Owner-Trustee the excess, if any, of the Termination Value computed as set forth below in this §7.9 (hereinafter called the Termination Value) in respect of such Unit or Units over the net sales price of such Unit or Units after deducting from such sales price any and all out-of-pocket costs and expenses whatsoever incurred by the Owner-Trustee in connection with such sale. If no sale shall occur on the date scheduled therefor as above provided, this Lease shall continue in full force and effect without change unless and until the Lessee pays the Owner-Trustee an amount equal to the Termination Value of such Unit or Units (in which case such Unit or Units are to be returned to the Owner-Trustee in accordance with the procedures set forth in Article 17 hereof); provided, however, that the Lessee, on behalf of the Owner-Trustee, may attempt to sell such Unit or Units for cash at some later date upon 30 days' prior written notice to the Owner-Trustee and the Vendor and following the procedure set forth above. In the event of any such sale for cash and the receipt by the Owner-Trustee of the amounts above described, the obligation of the Lessee to pay rent pursuant to Article 3 hereof in respect of such Unit or Units subject to a Termination on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Owner-Trustee shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any such sale pursuant to this §7.9, other than to transfer or to cause to be transferred all of the Owner-Trustee's right, title and interest in and to such Unit or Units to the purchaser named in the highest bid certified by the Lessee to the Owner-Trustee as above provided. Any such sale pursuant to this §7.9 shall be free and clear of all of the Lessee's rights to such Unit or Units, but otherwise shall be made without warranties other than against the acts or omissions to act of, or claims (not related to the ownership of the Units) against the Owner-Trustee or the Owners.

The Termination Value of a Unit as of the Termination Date on which payment is made shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite such Termination Date.

Notwithstanding the foregoing, the Lessee may elect by written notice at least 45 days prior to the Termination Date to rescind its notice of termination whereupon this Lease will continue in full force and effect as though no such notice of termination had been given by the Lessee, and the Lessee shall pay the Owner-Trustee's reasonable out-of-pocket costs and expenses incurred in anticipation of the notice of termination which was rescinded; provided, however, that the Lessee shall have thereafter the right to terminate this Lease with respect to such Unit or Units as provided above.

#### ARTICLE 8. REPORTS

On or before April 30 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Owner-Trustee and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and identification numbers of all Units that have suffered a Casualty Occurrence or a Termination during the preceding calendar year or then withdrawn from use pending repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted

or repaired during the period covered by such statement, the numbers and markings required by Article 5 hereof have been preserved or replaced. The Owner-Trustee, the Vendor and each Owner shall each have the right, by its agents, to inspect the Units and the maintenance records with respect thereto at such reasonable times as the Owner-Trustee, the Vendor or such Owner may request during the continuance of this Lease.

#### ARTICLE 9. DISCLAIMER OF WARRANTIES

NEITHER THE OWNER-TRUSTEE NOR THE VENDOR MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE OWNER-TRUSTEE NOR THE VENDOR MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Owner-Trustee and the Vendor, on the one hand, and the Lessee, on the other hand, are to be borne by the Lessee; but the Owner-Trustee hereby irrevocably appoints the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against the Builder under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Owner-Trustee may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. Neither the Owner-Trustee nor the Vendor shall have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability (including, without limitation, strict liability in tort or otherwise), loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks

relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee, on the one hand, and the Owner-Trustee and the Vendor, on the other hand, that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner-Trustee or the Vendor based on any of the foregoing matters.

#### ARTICLE 10. LAWS AND RULES

§10.1. Compliance. The Lessee agrees, for the benefit of the Owner-Trustee and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement, addition or improvement of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Owner-Trustee or the Vendor, adversely affect the property or rights of the Owner-Trustee or the Vendor under this Lease or under the CSA.

§10.2. Reports by Owner-Trustee. The Lessee agrees to prepare and deliver to the Owner-Trustee and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner-Trustee and the Vendor) any and all reports (other than income tax returns) to be filed by the Owner-Trustee with any federal, state or other regulatory authority by reason of the ownership by the Owner-Trustee

or the Vendor of the Units or the leasing thereof to the Lessee. The Lessee shall reimburse the Owner-Trustee and the Vendor for their reasonable out-of-pocket expenses incurred in connection with the filing of such reports.

#### ARTICLE 11. MAINTENANCE

§11.1. Units in Good Operating Order. The Lessee agrees that, at its own cost and expense, it will maintain and keep, or cause to be maintained and kept, each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

§11.2. Additions, Modifications and Improvements. (1) Severable. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to any Unit during the term of this Lease as are readily removable without causing material damage to such Unit. Provided that no Event of Default, or event which but for the lapse of time or the giving of notice or both would be an Event of Default, shall have occurred and be continuing, the Lessee may remove such addition, modification or improvement before such Unit is returned to the Owner-Trustee, and the Lessee shall thereafter own such addition, modification or improvement. The Lessee shall repair all damage to such Unit resulting from such installation and removal so as to restore such Unit to the condition in which it existed prior to the installation of such addition, modification or improvement (ordinary wear and tear excepted). If the Owner-Trustee so agrees, the Lessee shall not be required to remove any addition, modification or improvement if the retention of such addition, modification or improvement will not adversely affect the operating capabilities of such Unit in the possession of the Owner-Trustee. Any addition, modification or improvement not so removed shall be the property of the Owner-Trustee.

(2) Non-severable. Any and all parts installed on and additions, modifications, improvements and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions of §§11.2(1) hereof, (ii)



the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are not readily removable without causing material damage to such Unit and which are required for the operation or use of such Unit by the Interchange Rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body or otherwise required under §10.1 of this Lease, shall constitute accessions to such Unit; and full ownership thereof, free from any lien, charge, security interest or encumbrance (except for those created by the CSA), shall immediately be vested in the Owner-Trustee and the Vendor as their respective interests may appear in the Unit itself.

#### ARTICLE 12. INDEMNIFICATION

§12.1. Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold the Owner-Trustee (in both its individual and fiduciary capacities), each Owner, the Vendor and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses (including without limitation reasonable attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising or alleged to arise out of, or in connection with Lessee's rights and obligations under, this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee, the Vendor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or

loss of property on or near the Units or in any manner growing out of or connected with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Owner-Trustee) or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Owner-Trustee's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement, except to the extent such claim arises from an act or omission of the Owner-Trustee. The Lessee shall be obligated under this §12.1, irrespective of whether or not any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this §12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and reasonably approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all reasonable costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §12.1, the Lessee shall pay directly to such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances

in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this §12.1 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute such an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this §12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made. Nothing in this §12.1 shall constitute a guaranty by the Lessee of the Indebtedness (as defined in § 4.3(b) of the CSA) of the Owner-Trustee under the CSA or a guaranty of the residual value of any Unit.

§12.2. Indemnification of the Builder. The Lessee further agrees to indemnify, protect and hold harmless the Builder as a third party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and reasonable counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any Unit of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right.

§12.3. Survival. The indemnities contained in this Article 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or

existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

#### ARTICLE 13. DEFAULT

§13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in Articles 3, 7, 12, 16 or 19 hereof or Paragraph 11 of the Participation Agreement, and such default shall continue for ten days;

B. the Lessee shall, for more than 45 days after the Vendor, either Owner or the Owner-Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Lease or of the Participation Agreement on its part to be complied with or performed;

C. any representation or warranty made by the Lessee or by the Guarantor herein or in the Participation Agreement or in any certificate or statement furnished to the Owner-Trustee or either Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

D. a petition for reorganization under the Bankruptcy Act, as now constituted or as may hereafter be amended, shall be filed by or against the Lessee or the Guarantor, unless such petition

shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) within 60 days after such petition shall have been filed;

E. any other proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Consent or the Guarantor under the Guaranty under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent or the Guarantor under the Guaranty, as the case may be) unless such proceedings shall be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) within 60 days after such proceedings shall have been commenced; or

F. an event of default set forth in Article 16 of the CSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under the Consent;

then, in any such case, the Owner-Trustee, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) upon 5 days' written notice to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Owner-Trustee may by its agents enter upon the premises of the Lessee or other premises, in so far as the Lessee may be lawfully authorized so to permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds arising therefrom, and in connection therewith use and employ any available trackage and other facilities or means of the Lessee; but the Owner-Trustee shall, nevertheless, have a right to recover forthwith from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the

rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as liquidated damages for loss of the bargain and not as a penalty a sum, with respect to each Unit, which represents (i) whichever of the following amounts that the Owner-Trustee in its sole discretion shall specify: (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Owner-Trustee reasonably estimates to be obtainable for each Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, in the event the Owner-Trustee shall have sold such Unit, the net proceeds of the sale or (y) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over either the amount the Owner-Trustee reasonably estimates to be the sales value of such Unit at such time or, in the event the Owner-Trustee shall have sold such Unit, the net proceeds of such sale, plus (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty in this Lease other than for the payment of rental.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Owner-Trustee's remedies with respect thereto, including, without limitation, all costs and expenses incurred in connection with the return of any Unit.

§13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Owner-Trustee shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively and shall be in addition to all other remedies existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law.

§13.3. Failure to Exercise Rights is not Waiver. The failure of the Owner-Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§13.4. Notice of Event of Default. The Lessee also agrees to furnish the Owner-Trustee, each Owner and the Vendor, promptly upon any responsible officer's becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice thereof specifying such condition and the nature and status thereof. For the purposes of this §13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### ARTICLE 14. RETURN OF UNITS UPON DEFAULT

§14.1. Return of Units. If this Lease shall terminate pursuant to §13.1 hereof or pursuant to Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Owner-Trustee. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, shall be fit



for loading, shall meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction, shall have attached or affixed thereto any special device considered an accession thereto as provided in Article 11 hereof and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in said Article 11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and promptly place such Units upon such storage tracks as the Owner-Trustee reasonably may designate;

(b) permit the Owner-Trustee to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Owner-Trustee; and

(c) cause the same to be transported to any reasonable place as directed by the Owner-Trustee.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee, and upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair, continue to maintain property insurance in accordance with the provisions of §7.7(1) hereof and permit the Owner-Trustee or any person designated by it, including the authorized

representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of the negligence or willful misconduct of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser, lessee or user, the right of inspection granted under this sentence. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Owner-Trustee and, if received by the Lessee, shall be promptly turned over to the Owner-Trustee. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, the Lessee shall in addition pay to the Owner-Trustee for each day thereafter an amount equal to the amount, if any, by which that percentage of the Purchase Price of such Unit for each such day obtained by dividing by 180 the average of the basic lease rates for such Units as set forth in §3.1 hereof for each semiannual payment for such Unit exceeds the actual earnings received by the Owner-Trustee on such Unit for each such day. Payment shall be made on the 15th day of each month for all moneys due under the preceding sentence.

§14.2. Owner-Trustee Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of §14.1, the Lessee hereby irrevocably appoints the Owner-Trustee as the agent and attorney of the Lessee, with full power and authority at any time while the Lessee is obligated to deliver possession of any Unit to the Owner-Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

#### ARTICLE 15. ASSIGNMENT, POSSESSION AND USE

§15.1. Assignment; Consent. The Owner-Trustee shall not assign its rights under this Lease, in whole or in part, without the prior written consent of the Lessee, which consent shall not be unreasonably withheld. As more fully set forth in the Consent, the Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

§15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units.

(1) Without the prior written consent of the Owner-Trustee and the Vendor, which consent shall not be unreasonably withheld, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as provided in §15.2(2) hereof; and the Lessee shall not, without the prior written consent of the Owner-Trustee and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of said § 15.2(2). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, would become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Owner-Trustee, either Owner or the Vendor or resulting from claims against the Owner-Trustee, either Owner or the Vendor not related to the ownership of the Units, other than any encumbrance on the leasehold estate of the Lessee and other than liens for taxes, assessments or governmental charges or levies, either not due and delinquent or being contested in accordance with §6.2 hereof or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, either not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension)) upon or with respect to any Unit, including any accession thereto, or the interest of the Owner-Trustee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the quiet enjoyment and possession of the Units and to the use of the Units by it or any affiliate (including, without limitation, any direct or indirect domestic subsidiary of Occidental Petroleum Corporation) upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such

affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights under the Lease or to sublease the Units to any such affiliate (or, with prior written notice to the Owner-Trustee, to any other solvent corporation in the United States for nonconsecutive periods of one year or less), but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign or sublease, or permit the assignment, sublease or use of, any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession and use of the Units included in such sublease; provided, however, that every such sublease shall by its express provisions be subject to the rights and remedies of the Owner-Trustee under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default hereunder.

The Lessee agrees that, if any proceeding shall be brought for the sale or foreclosure of the Owner-Trustee's interest under the CSA, and if the Owner-Trustee's interest in the Equipment shall be sold pursuant to the CSA, the Lessee will, in the event that this Lease shall not, prior to such sale, have been terminated or have expired in accordance with its terms, attorn to the purchaser upon any such sale at foreclosure or otherwise, including the Vendor if it should be the purchaser thereof, and will recognize such purchaser as the lessor under this Lease, and this Lease shall continue in full force and effect as a direct lease between the Lessee and such purchaser upon and subject to all the terms, covenants, conditions and agreements set forth in this Lease, if (i) such purchaser shall have assumed and agreed to perform

all obligations required to be performed by the original lessor under this Lease in respect of periods after such purchase, and (ii) such purchase shall have been made expressly subject to the rights of the Lessee under this Lease. The Lessee agrees that, upon compliance with clauses (i) and (ii) of the preceding sentence, it will execute and deliver, at any time and from time to time, upon the request of the Vendor or any such purchaser, any agreement, instrument or other document which, in the judgment of the party making such request, may be necessary or appropriate in any such foreclosure proceeding, or otherwise, to evidence such attornment.

§15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation. Nothing in this Article 15 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Consent) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

ARTICLE 16. RENEWAL OPTION; PURCHASE OPTION;  
FAIR MARKET VALUE AND FAIR MARKET RENTAL  
VALUE

§16.1 Renewal Option. Upon 120 days' prior written notice and provided no Event of Default, or event which, but for the lapse of time or the giving of notice or both, would be an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled at the end of the original term of this Lease to renew this Lease with respect to any or all Units for a term of not less than five nor more than seven years from the end of the original term for a rental equal to the Fair Market Rental Value (as defined in §16.3 hereof) thereof payable seminannually in arrears on March 30 and September 30 of

each year, with Termination Values for the period of renewal, including March 30, 1997, determined in a manner consistent with the original calculations of the prior Termination Values, and otherwise on the same terms and conditions as provided herein.

Notwithstanding the foregoing, at any time at least 90 days prior to any such end of the term of this Lease, the Lessee may elect by written notice to rescind its notice to renew, whereupon the Lessee shall pay the Owner-Trustee's reasonable out-of-pocket costs and expenses incurred in anticipation of the notice to renew which was rescinded.

§ 16.2 Purchase Option. Upon 120 days' prior written notice and provided no Event of Default, or event which, but for the lapse of time or the giving of notice or both, would be an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled at the end of the original term or any renewal term of this Lease to purchase any or all Units at the Fair Market Value (as defined in §16.3 hereof) thereof at the time of such purchase on an "as is" basis.

Notwithstanding the foregoing, at any time at least ~~ninety (90)~~ days prior to any such end of the term of this Lease, the Lessee may elect by written notice to rescind its notice to purchase whereupon the Lessee shall pay the Owner-Trustee's reasonable out-of-pocket costs and expenses incurred in anticipation of the notice to purchase which was rescinded.

§ 16.3 Fair Market Rental Value and Fair Market Value; Definition; Determination. For the purposes of this Lease, the Fair Market Rental Value of any Unit shall be equal to the rent of such Unit in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession or a used equipment dealer) and an informed and willing lessor under no compulsion to lease, and the Fair Market Value of any Unit shall be equal to the value of such Unit on an "as is" basis in an arm's-length transaction between an informed and willing buyer-user (other than a lessee currently in possession or a used equipment dealer) and an informed and willing seller under no compulsion to sell. Costs of removal from the location of current use shall not be a deduction in determining either of the above-mentioned values.

The Lessee and the Owner-Trustee agree to negotiate in good faith the Fair Market Rental Value or the Fair Market Value, as the case may be, and, in the event such agreement cannot be reached at least 90 days prior to any such end of the term of this Lease, shall, at the Lessee's or the Owner-Trustee's option, submit the question of value to independent appraisers in the manner specified below in this §16.3. The Lessee and the Owner-Trustee agree to be bound by the determination of such independent appraisers. In no event shall a Unit be sold or leased pursuant to this Article 16 for less than its Fair Market Value or Fair Market Rental Value, as the case may be.

If either party hereto shall have given written notice to the other requesting determination of the Fair Market Value or the Fair Market Rental Value, the parties shall attempt to determine such value, and, failing such agreement within 20 days after the giving of such notice, the parties shall consult for the purpose of appointing one qualified independent appraiser by mutual agreement. If no such appraiser shall be so appointed within 30 days after such notice shall have been given, each party shall appoint an independent appraiser (which shall not be the manufacturer of such property) within 35 days after such notice shall have been given, and the two appraisers so appointed shall within 40 days after such notice shall have been given appoint a third independent appraiser (which shall not be the manufacturer of such property). If no such third appraiser shall be so appointed within 40 days after such notice shall have been given, either party may apply to the American Arbitration Association (or any successor thereto) for the appointment of an arbitrator in Lexington, Kentucky, or such other city as shall be agreed upon by the parties, and both parties shall be bound by any appointment made by such association. Each appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value or the Fair Market Rental Value, as the case may be, of the property in question within 30 days after his appointment. If the parties shall have appointed a single appraiser, his determination of value shall be final and binding as the Fair Market Value or the Fair Market Rental Value, as the case may be. If three appraisers shall have been appointed as hereinabove set forth, the values determined by the three appraisers shall be averaged, the

determination which shall differ most from such average shall be disregarded, the remaining two determinations shall be averaged, and such average shall be final and binding as the Fair Market Value or the Fair Market Rental Value, as the case may be. The Lessee and the Owner-Trustee shall equally bear all expenses of such appraisers, provided that if three appraisers are chosen, the Owner-Trustee and the Lessee shall each bear all expenses of its chosen appraiser, and further provided that if an Event of Default has occurred and is continuing, all expenses of such appraisers shall be borne by the Lessee.

ARTICLE 17. RETURN OF UNITS UPON EXPIRATION  
OF TERM

As soon as practicable after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, deliver possession of such Unit to the Owner-Trustee upon such storage tracks within the States of Virginia and West Virginia and the Commonwealths of Kentucky and Pennsylvania as the Lessee may reasonably designate or, in the absence of such designation, as the Owner-Trustee may select, and permit the Owner-Trustee to store such Unit on such tracks for a period not exceeding 30 days and transport the same upon disposition of the Units, at any time within such 30-day period, to any connecting carrier for shipment, all as directed by the Owner-Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or willful misconduct of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser, lessee or user, the



rights of inspection granted under this sentence. Each Unit returned to the Owner-Trustee pursuant to this Article 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) be fit for loading, (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iv) have attached or affixed thereto any special device considered an accession thereto as provided in Article 11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall (i) maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances and (ii) continue to carry and maintain insurance as required pursuant to §7.7 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee, and upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Owner-Trustee and, if received by the Lessee, shall be promptly turned over to the Owner-Trustee. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 90 days after such termination, the Lessee shall in addition pay to the Owner-Trustee for each day thereafter an amount equal to the amount, if any, by which that percentage of the Purchase Price of such Unit for each such day obtained by dividing by 180 the average of the basic lease rates for such Units as set forth in § 3.1 hereof for each semiannual payment for such Unit exceeds the actual earnings received by the Owner-Trustee on such Unit for each such day. Payment shall be made on the 15th day of each month for all moneys due under the preceding sentence.

## ARTICLE 18. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit and recording required of the Owner-Trustee under the CSA. The Lessee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will refile, reregister, redeposit and rerecord whenever required) any and all further instruments required by law or reasonably requested by the Owner-Trustee or the Vendor for the purpose of proper protection, to their reasonable satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Owner-Trustee evidence of all such filings, registrations, deposits and recordings, and an opinion or opinions of counsel for the Lessee with respect thereto reasonably satisfactory to the Vendor and the Owner-Trustee. This Lease, the CSA, the Assignment and the Lease Assignment shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

## ARTICLE 19. INTEREST ON OVERDUE RENTALS

Any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at 10% per annum, or at such lesser maximum rate permitted by law, on the overdue rentals and other obligations for the period of time during which they are overdue.

## ARTICLE 20. OWNER-TRUSTEE'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner-Trustee may, upon notice to the Lessee, itself perform or comply

with such agreement, and the amount of the reasonable out-of-pocket costs and expenses of the Owner-Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which Bank of America National Trust and Savings Association charges for unsecured 90-day loans to large corporate borrowers at the time in effect, or at such lesser maximum rate permitted by law, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Owner-Trustee shall be deemed a waiver of the rights and remedies of the Owner-Trustee or any assignee of the Owner-Trustee against the Lessee hereunder.

#### ARTICLE 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Owner-Trustee, at 130 South LaSalle, Street, Chicago, Illinois 60690, Attention: Vice President, and

(b) if to the Lessee, at P.O. Box 11430, Lexington, Kentucky 40575, Attention: Vice President-Finance, with a copy to Occidental Petroleum Corporation, 10889 Wilshire Boulevard, Suite 1500, Los Angeles, California 90024, Attention: Associate Director-Finance,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

#### ARTICLE 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such

prohibition or enforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### ARTICLE 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, the Guaranty, the Lease Assignment and the Consent, this Lease exclusively and completely states the rights of the Owner-Trustee and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Owner-Trustee and the Lessee.

#### ARTICLE 24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owners, the Builder, the Vendor and the permitted successors and assigns of each such party), and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

#### ARTICLE 25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked Original Counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

ARTICLE 26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 27. IMMUNITIES; NO RECOURSE

(1) No recourse shall be had in respect of any obligation due under this Lease against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or against the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision or statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(2) It is expressly agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by Exchange National Bank of Chicago, including its successors and assigns, or for the purpose or with the intention of binding said institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution on account of any representation, undertaking or agreement herein of the said institution, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

ARTICLE 28. AGREEMENTS FOR BENEFIT OF  
OWNER-TRUSTEE'S ASSIGNS

All rights and remedies of the Owner-Trustee hereunder (including, but not limited to, its rights under Articles 6, 7, 9, 12, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owner-Trustee's assigns (including the Vendor).

ARTICLE 29. TERM OWNER-TRUSTEE

Whenever the term Owner-Trustee is used in this Lease it shall apply and refer to the Owner-Trustee and any assignee of the Owner-Trustee (including, so long as any Indebtedness under the CSA or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

IN WITNESS WHEREOF, the parties hereto have executed or caused this Lease to be executed as of the date first above written.

ISLAND CREEK COAL COMPANY

[corporate seal]  
Attest:

by \_\_\_\_\_  
R.B. Casriel, Treasurer

\_\_\_\_\_  
Paul C. Hebner, Vice  
President and Secretary

EXCHANGE NATIONAL BANK OF  
CHICAGO, not in its  
individual capacity but  
solely as Owner-Trustee

[seal]  
Attest:

by \_\_\_\_\_  
Vice President

\_\_\_\_\_  
Authorized Officer

STATE OF ILLINOIS )  
                              ) ss:  
COUNTY OF COOK        )

On this \_\_\_\_\_ of February, 1979, before me personally appeared \_\_\_\_\_, to me personally know, who being by me duly sworn, says that he is a \_\_\_\_\_ of Exchange National Bank of Chicago, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors or its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association, not in its individual capacity but solely as Trustee.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires \_\_\_\_\_

STATE OF CALIFORNIA       )  
                                  ) ss:  
COUNTY OF LOS ANGELES    )

On this \_\_\_\_\_ of February, 1979, before me personally appeared R. B. Casriel, to me personally known, who being by me duly sworn, says that he is the Treasurer of Island Creek Coal Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires \_\_\_\_\_



APPENDIX A TO LEASE

<u>Type:</u>	100-ton, open-top hopper cars, class H-12, manufactured in the shops of Norfolk and Western Railway Company in Roanoke, Virginia.
<u>A.A.R. Mechanical Designation:</u>	HT.
<u>Builder's Specifications:</u>	The Units shall be built in accordance with N & W Bills of Materials 612 and 622, N & W General Arrangement Drawing J-51780 and related drawings (except that stenciling drawing shall be D-52088, rather than D-51801) and Brake Arrangement Drawing J-51802, all of which are incorporated herein by reference and made a part hereof, and shall be equipped with Stucki HS-7 stabilizers; and shall be painted with "direct-to-metal" Evans #2 yellow paint and stenciled with reporting marks and car numbers in Pruitt Shaffer #11926 royal blue paint as set forth in drawing D-52088.
<u>Quantity:</u>	236 (Groups of 100, 70 and 66).
<u>Unit Base Price:</u>	\$34,750.
<u>Total Base Price:</u>	\$8,201,000.
<u>Road (Serial) Numbers:</u>	ICRX 30,000 - 30,235, inclusive.

Estimated Times of Delivery:

February 14, 1979 (100 cars),  
February 28, 1979 (70 cars)  
and March 20, 1979 (66 cars).

Place of Delivery:

Fies Mine, Hopkins County,  
Kentucky.

- 
- \* This Appendix A sets forth a description of the Units having a total base price of \$8,201,000. It is understood, however, that certain of the Units may be delivered to and accepted by the Lessee prior to the execution and delivery of this Lease, in which case any Unit so delivered and accepted will be excluded from this Appendix A by an appropriate supplement hereto. After delivery of all of the Units covered by the CSA, this Appendix A will be appropriately amended, if necessary, to describe only those units covered by this Lease.

## APPENDIX B TO LEASE

Casualty

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price*</u>
September 30, 1979	86.9730%
March 30, 1980	89.5567%
September 30, 1980	89.1001%
March 30, 1981	90.7549%
September 30, 1981	90.2849%
March 30, 1982	90.8553%
September 30, 1982	90.6655%
March 30, 1983	91.0662%
September 30, 1983	90.2893%
March 30, 1984	90.0433%
September 30, 1984	89.1993%
March 30, 1985	88.5940%
September 30, 1985	87.4434%
March 30, 1986	86.4355%
September 30, 1986	85.0903%
March 30, 1987	83.8861%
September 30, 1987	82.8321%
March 30, 1988	80.9868%
September 30, 1988	78.5523%
March 30, 1989	76.0717%
September 30, 1989	73.4454%
March 30, 1990	70.7041%
September 30, 1990	67.8295%
March 30, 1991	64.8231%
September 30, 1991	61.7805%
March 30, 1992	58.6706%
September 30, 1992	55.5370%
March 30, 1993	52.5452%
September 30, 1993	49.2596%
March 30, 1994	46.1532%
September 30, 1994	42.7305%
March 30, 1995	39.4420%
September 30, 1995	35.8755%
March 30, 1996	32.3962%
September 30, 1996	28.6940%
March 30, 1997	25.0000%
and thereafter	

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\* As defined in the Lease

## APPENDIX C TO LEASE

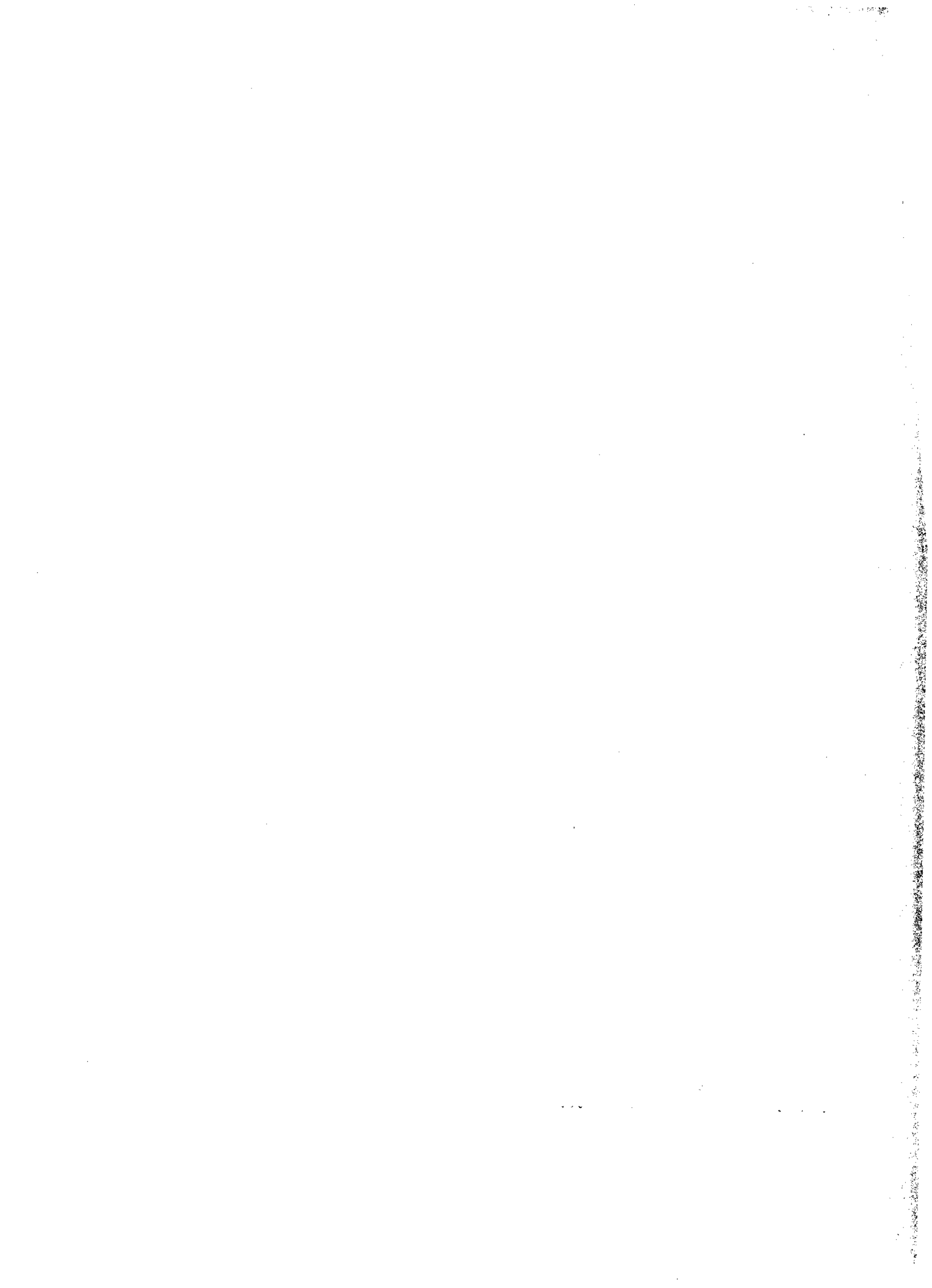
Termination

<u>Termination Dates</u>	<u>Percentage of Purchase Price*</u>
March 30, 1986	86.4355%
September 30, 1986	85.0903%
March 30, 1987	83.8861%
September 30, 1987	82.8321%
March 30, 1988	80.9868%
September 30, 1988	78.5523%
March 30, 1989	76.0717%
September 30, 1989	73.4454%
March 30, 1990	70.7041%
September 30, 1990	67.8295%
March 30, 1991	64.8231%
September 30, 1991	61.7805%
March 30, 1992	58.6706%
September 30, 1992	55.5370%
March 30, 1993	52.5452%
September 30, 1993	49.2596%
March 30, 1994	46.1532%
September 30, 1994	42.7305%
March 30, 1995	39.4420%
September 30, 1995	35.8755%
March 30, 1996	32.3962%
September 30, 1996	28.6940%
March 30, 1997	-0-

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\* As defined in the Lease





ANNEX D TO  
Conditional Sale  
Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated as of February 1, 1979 (hereinafter called this Assignment), by and between EXCHANGE NATIONAL BANK OF CHICAGO acting solely in its capacity as Trustee (hereinafter called the Owner-Trustee) under that certain Trust Agreement dated as of January 1, 1979, as amended by that certain Trust Amendment Agreement No. 1 dated as of February 1, 1979 (said Trust Agreement, as so amended, hereinafter called the Trust Agreement), with Citizens Fidelity Bank and Trust Company and Suburban Trust Company, and LASALLE NATIONAL BANK, as Agent (hereinafter called the Vendor) under a Participation Agreement dated as of the date hereof,

W I T N E S S E T H:

WHEREAS, the Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the CSA) with Shenandoah-Virginia Corporation (hereinafter called the Builder), providing for the sale to the Owner-Trustee of the units of railroad equipment (hereinafter called the Units) described therein as are delivered to and accepted by the Owner-Trustee thereunder;

WHEREAS, the Owner-trustee and Island Creek Coal Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Owner-Trustee to the Lessee of the Units;

WHEREAS, in order to provide security for the obligations of the Owner-Trustee under the CSA and as an inducement to the Vendor to invest in the Indebtedness (as defined in the CSA), the Owner-Trustee agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

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Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on February \_\_, 1979, at \_\_\_\_\_, recordation number \_\_\_\_\_.

1. The Owner-Trustee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Owner-Trustee under the CSA, all the Owner-Trustee's right, title and interest, powers, privileges and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee from the Lessee under or pursuant to the Lease whether as rent, casualty payment, termination payment, indemnity (except indemnity payments excluded from the income and proceeds from the Equipment, as defined in § 4.8 of the CSA), liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner-Trustee is or may become entitled to do under the Lease; provided, however, that so long as no event of default provided for in the CSA, or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing, no such assignment, transfer or set-over shall be effective with respect to either (a) the Owner-Trustee's right to collect any and all sums payable to it under Article 6 of the Lease unless and until the Vendor shall have notified the Owner-Trustee in writing in accordance with § 6.2 of the CSA of a claim made against the Vendor for any Taxes indemnified against under Article 6 of the CSA, or (b) the Owner-Trustee's right to collect any and all sums payable to it under Article 12 of the Lease unless and until the Vendor shall have given the Owner-Trustee written notice in accordance with § 14.1 of the CSA of any claim or liability against it which is indemnified against under said § 14.1. In furtherance of the foregoing (but subject to the provided, however clause of the preceding sentence), the Owner-Trustee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease. To the extent received, the Vendor will



apply such Payments to satisfy the obligations of the Owner-Trustee under the CSA and, so long as no event of default provided for in the CSA, or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing, the Vendor shall pay any balance to the Owner-Trustee on the same date such Payment is applied to satisfy such obligations of the Owner-Trustee (but in no event later than the third business day after the Vendor shall have received such Payments), by bank wire to the Owner-Trustee at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Owner-Trustee. If the Vendor shall not receive any rental payment under § 3.1 of the Lease when due, the Vendor shall notify the Owner-Trustee at the address set forth in the Lease; provided, however, that the failure to so notify the Owner-Trustee shall not affect the obligations of the Owner-Trustee hereunder or under the CSA. The Owner-Trustee will furnish to the Vendor a schedule, with such changes as may be appropriate from time to time, setting forth the amounts due the Vendor under the CSA and the Owner-Trustee under the Lease on each date for the payment thereof.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, transfer or in any way affect the liability of the Owner-Trustee under the Lease, it being understood that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner-Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner-Trustee or persons other than the Vendor.

3. The Owner-Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Owner-Trustee; without the written consent of the Vendor, the Owner-Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending or terminating the Lease, and the

Owner-Trustee agrees that any amendment or termination thereof without such consent shall be void.

4. The Owner-Trustee does hereby constitute the Vendor the Owner-Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Owner-Trustee or otherwise), to demand, receive and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner-Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Owner-Trustee's obligations under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Owner-Trustee.

6. The Owner-Trustee will, from time to time, execute and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to further assure the interest of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In such event, any such subsequent or successive assignee shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

8. The Owner-Trustee will pay and discharge any and all claims, liens, charges or security interests (other than created hereby and by the CSA) on or in the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Owner-Trustee, an Owner (as defined in the CSA), or their successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the CSA or the Lease (but including tax liens arising out of the

receipt of the income and proceeds from the Units), unless the Owner-Trustee or an Owner, as the case may be, shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

9. This Assignment shall be governed by the laws of the Commonwealth of Kentucky, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Owner-Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered to the Vendor.

11. The Vendor will not, so long as no event of default provided for in the CSA, or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner-Trustee to the Vendor by this Assignment and which are for the sole benefit of the Owner-Trustee, without the prior consent of the Owner-Trustee.

12. Anything in this Assignment to the contrary notwithstanding, each and all of the representations, undertakings and agreements in this Assignment made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by Exchange National Bank of Chicago nor for the purpose or with the intention of binding the said institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by the said institution solely in the exercise of the powers expressly conferred upon the said institution as trustee under the Trust Agreement; and that no personal liability is assumed by or shall at any time be asserted or enforceable against the said institution on account of any representation, undertaking or agreement herein of the Owner-Trustee, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person

claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same. The Owner-Trustee agrees that it will not enter into any amendment or modification of the Trust Agreement except as provided in Articles VI, VII and VIII thereof.

13. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked Original Counterpart delivered to the Vendor shall be deemed to be the original counterpart and all other counterparts shall be deemed to be duplicates thereof. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

EXCHANGE NATIONAL BANK OF  
CHICAGO, not in its  
individual capacity but  
solely as Owner-Trustee

[Seal]

By \_\_\_\_\_  
Title: Vice President

Attest:

By \_\_\_\_\_  
Title:

LASALLE NATIONAL BANK,  
as Agent

[Seal]

By \_\_\_\_\_  
Title: Vice President

Attest:

By \_\_\_\_\_  
Title:

STATE OF ILLINOIS           )  
                                   ) ss.  
 COUNTY OF COOK             )

On this \_\_\_\_\_ day of February, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is an \_\_\_\_\_ of Exchange National Bank of Chicago, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Trustees and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association, not in its individual capacity but solely as Trustee.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires \_\_\_\_\_

STATE OF ILLINOIS           )  
                                   ) ss.  
 COUNTY OF COOK             )

On this \_\_\_\_\_ day of February, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is an \_\_\_\_\_ of LaSalle National Bank, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires \_\_\_\_\_

## CONSENT AND AGREEMENT

The undersigned, ISLAND CREEK COAL COMPANY (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby acknowledges receipt of a copy of, and consents to all the terms and conditions of the Lease Assignment, and agrees that:

(1) it will pay all rentals, casualty payments, termination payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to LaSalle National Bank, as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, in immediately available funds, at 135 South La Salle Street, Chicago, Illinois 60690, Attention: Vice President (or at such other address as may be furnished in writing to the Lessee by the Vendor); provided, however, that it will pay to the Owner-Trustee all sums payable by the Lessee to the Owner-Trustee pursuant to Article 6 and Article 12 of the Lease unless and until it shall have received written notice from the Vendor that the assignment, transfer or set-over of the Owner-Trustee's right to collect such sums has become effective under the terms of the proviso to the first sentence of section 1 of the Lease Assignment and that, as a consequence, all or a portion of such sums should be payable to the Vendor;

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Owner-Trustee;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which would result in an alteration or impairment of the Lease, the Lease Assignment, this Consent and Agreement or of any of the rights created by any thereof.

ISLAND CREEK COAL COMPANY

By R. B. Casriel, Treasurer

[Corporate Seal]

Attest:

Paul C. Hebner, Vice  
President and Secretary







CERTIFICATE OF ACCEPTANCE

Island Creek Coal Company ("Lessee"), on behalf of Exchange National Bank of Chicago, as Owner-Trustee under that certain Conditional Sale Agreement dated as of February 1, 1979, between Owner-Trustee and Shenandoah-Virginia Corporation ("Builder"), and on its own behalf under that certain Lease of Railroad Equipment dated as of February 1, 1979, between Owner-Trustee and Lessee (the "Lease"), hereby certifies that the below-described units of railroad equipment (the "Units") have been inspected and accepted on and as of the date hereof and are marked in accordance with Article 5 of the Lease:

Type: New 100-ton, open-top hopper cars, class H-12,  
manufactured in the shops of Norfolk and  
Western Railway Company.

Quantity: \_\_\_\_\_.

Road (Serial) Numbers: ICRX \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

The execution of this Certificate of Acceptance in no way relieves Builder of, or affects its responsibilities for, the warranties it has made with respect to the Units.

Dated: \_\_\_\_\_, 1979.

ISLAND CREEK COAL COMPANY

By \_\_\_\_\_  
R. B. Casriel, Treasurer